

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

FLAGSTAR BANK, FSB,	:	APPEAL NO. C-090166
Plaintiff-Appellant,	:	TRIAL NO. A-0804164
vs.	:	
JOHN L. REINHOLD,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee,	:	
and	:	
JAMES WHITED, ET AL.	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Flagstar Bank, FSB, appeals from the trial court’s entry granting summary judgment to defendant-appellee John L. Reinhold on its claims for negligent misrepresentation and professional negligence.

In April 2001, Flagstar purchased several residential mortgage loans from defendant Airline Union’s Mortgage Company (“AUM”). The borrowers on these loans defaulted, leaving insufficient collateral to satisfy the loans. In April 2008,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Flagstar filed suit against AUM, the loan officers involved, and a group of residential property appraisers, including Reinhold, to recover damages. In its complaint, Flagstar alleged that Reinhold had negligently performed real estate appraisals on December 19, 2001, June 12, 2002, and March 10, 2001.

Reinhold subsequently moved for summary judgment, asserting that Flagstar's claims against him for negligent misrepresentation and professional negligence were barred by the four-year statute of limitations found in R.C. 2305.09(D). The trial court, relying upon the Ohio Supreme Court's decision in *Investors REIT One v. Jacobs*² and this court's subsequent decision in *Hater v. Gradison, Division of McDonald & Company Securities, Inc.*,³ granted Reinhold's motion. Flagstar subsequently dismissed without prejudice its claims against the other defendants and filed a timely appeal from the trial court's judgment.

On appeal, Flagstar has raised a single assignment of error, in which it argues that the trial court erred by entering summary judgment for Reinhold on its claims of negligent misrepresentation and professional negligence. Flagstar argues that the trial court erred in holding that its negligence claims against Reinhold accrued for statute-of-limitations purposes on the date his appraisals had been completed, instead of on the date that it had suffered actual damages. We disagree.

In *Investors REIT One*, the Ohio Supreme Court rejected a discovery rule for claims of accountant negligence in the context of R.C. 2305.09(D) and held that the four-year statute of limitations governing those claims commenced to run "when the

² (1989), 46 Ohio St.3d 176, 546 N.E.2d 206.

³ (1995), 101 Ohio App.3d 99, 655 N.E.2d 189.

allegedly negligent act was committed.”⁴ The Ohio Supreme Court affirmed its holding in *Investors REIT One* in *Grant Thornton v. Windsor Homes, Inc.*⁵

In *Hater v. Gradison, Division of McDonald & Company Securities, Inc.*, this court extended the reasoning of *Investors REIT One* to claims of professional negligence by brokers, dealers, and appraisers.⁶ In so doing, we expressly rejected the argument that Flagstar makes in this appeal: that no actionable injury can be held to have occurred so as to set in motion the running of the statute of limitations until damage has resulted from that negligent act.⁷ In *Hater*, we held that this argument was nothing more than an attempt to circumvent the unavailability of the discovery rule for these types of claims.⁸

While Flagstar has cited a number of cases, mainly from the Fifth and Sixth Appellate Districts, that arguably conflict with our analysis in *Hater*,⁹ we believe that our reasoning in *Hater* is sound.¹⁰ It is consistent not only with the majority of Ohio appellate districts, but also with the broad and explicit language of the Ohio Supreme Court in *Investors REIT One* and *Grant Thornton*.¹¹

Because the record reveals that Reinhold had performed each of the real estate appraisals in 2001 or 2002, which was more than four years before Flagstar filed its claims for professional negligence and negligent misrepresentation against

⁴ *Investors REIT One*, supra, at 182.

⁵ (1991), 57 Ohio St.3d 158, 160, 566 N.E.2d 1220.

⁶ *Hater*, supra, at 109-111.

⁷ *Id.* at 110.

⁸ *Id.*

⁹ See, e.g., *JP Morgan Chase Bank v. Lanning*, 5th Dist. No. 2007CA00223, 2008-Ohio-893; *Fritz v. Brunner Cox, L.L.P.* (2001), 142 Ohio App.3d 664, 756 N.E.2d 740; *Gray v. Estate of Barry* (1995), 101 Ohio App.3d 764, 768-69, 656 N.E.2d 729 .

¹⁰ See *Dancar Properties, Ltd. v. O'Leary-Kientz*, 1st Dist. No. C-030936, 2004-Ohio-6998, at ¶14 (following *Hater* and rejecting the discovery rule for negligent-misrepresentation claims).

¹¹ See *Schnippel Construction Inc. v. Jim Proffit*, 3rd Dist. No. 17-09-12, 2009-Ohio-5905 (summarizing the extensive Ohio appellate case law rejecting the “delayed damages,” “actual injury,” or “actual damage” argument).

him, the trial court properly entered summary judgment in his favor. As a result, we overrule Flagstar's sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 10, 2010
per order of the Court _____.
Presiding Judge